

### **REMARKS/ARGUMENTS**

Claims 1-65 are pending in this application. Claims 1-54 are rejected. Claims 55-65 are hereby withdrawn in response to a previous restriction requirement. Applicants retain the right to pursue these claims in a divisional application. In view of the remarks and arguments made herein, Applicants respectfully request reconsideration of this application.

Claims 1-54 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jury *et al.* (EP 0781510, hereinafter referred to as "Jury"). As Applicants explain in their disclosure, there have previously been attempts to add chocolate to yogurt. However, there have been several problems with just adding chocolate bits to yogurt, problems that the Applicants have overcome. First, there is a concern about the microbiological spoilage resulting from adding chocolate to yogurt. Chocolate inherently contains microbiological organisms that can germinate and grow in the presence of water in the amounts found in yogurt. (See, for example, Applicants' specification, paragraph 11). Microbiological spoilage can prematurely reduce shelf life of the product. (See, Applicants' specification, paragraph 13). Second, there is a problem maintaining acceptable taste and texture when chocolate bits, or other lipid-based inclusions, are added to yogurt. Chocolate, which contains water-soluble solids such as sugar and salt, dissolves in yogurt because of the yogurt's moisture content. (See, Applicants' specification, paragraph 33). Past attempts to overcome this problem have reduced the amount of water-soluble solids in the chocolate, *i.e.*, the sugar, resulting in a bittersweet, rather than the sweet chocolate flavor preferred by many Americans. These problems, which Applicants' claimed invention overcome, are not even considered in Jury.

Jury discloses a method for adding specific, characteristic-shaped inclusions to ice cream. Jury provides no guidance with respect to maintaining physical integrity of the chocolate inclusions in yogurt. Chocolate inclusions do not dissolve in ice cream, which is frozen, whereas the sugar and salt contained in chocolate or other confectionary does dissolve in yogurt, which has a high water content and is maintained at refrigerated, not frozen, temperatures. Moreover, the real thrust of Jury's invention is maintaining the characteristic shapes of the chocolate pieces. (See, Jury, column 2, lines 31-36, "...a major object of their presence, in contrast to normal

chocolate chips, is their visual effect.”) Simply mixing the shaped chocolate bits of Jury into a yogurt would cause the chocolate to dissolve in the yogurt, thus defeating the purpose of Jury’s invention, maintaining the characteristic shapes of the chocolate.

Nor does Jury provide any guidance with respect to microbiological stability of chocolate in yogurt. Again, microbiological stability is not a concern in ice cream, because ice cream is frozen, thus any microorganisms cannot germinate and cause premature spoilage. (See, Applicants’ specification, paragraph 29, “Yogurt, unlike ice cream which may contain chocolate chips, is not maintained in a frozen state to prevent the growth of microorganisms that might arrive with the chocolate.” See also, Applicants’ specification paragraph 12). Jury does not teach or suggest any way to prevent microbiological spoilage when adding chocolate or other lipid-based inclusions to yogurt.

Nowhere does Jury teach or suggest a method of adding lipid-based inclusions to a filling suitable for flavoring yogurt, wherein the filling has a pH of less than 4.6; and wherein the lipid-based inclusions maintain physical integrity and microbiological stability when the filling is incorporated into yogurt. Jury teaches adding characteristic-shaped chocolate pieces to ice cream, and notes in passing that the shapes may be stirred into other confectionary. Jury does not teach or suggest adding lipid-based inclusions to a filling for yogurt at all. Jury does not teach or suggest adding lipid-based inclusions to a filling having a pH of less than 4.6. Jury does not teach or suggest a method by which lipid-based inclusions, such as chocolate, can be added to yogurt while maintaining physical integrity of the inclusions and microbiological stability of the finished product when the filling is incorporated into yogurt. Since Jury does not teach or suggest all of the limitations of claim 1, or the claims dependent thereon, Applicants respectfully submit that these claims are novel and non-obvious over Jury.

Nowhere does Jury teach or suggest a method of delivering lipid-based inclusions to yogurt comprising the steps of providing a filling for yogurt, wherein the filling has a pH of 4.6 or less; chilling the filling to a temperature below the temperature required to crystallize the lipid-based inclusions; providing a lipid-based melt that will form the inclusions when crystallized; injecting the lipid-based melt into the chilled filling; allowing the lipid-based melt to at least partially solidify in the chilled filling; and agitating to form the lipid-based inclusions

in the filling; wherein the lipid-based inclusions maintain physical integrity and microbiological stability when the filling is incorporated into yogurt. Nowhere does Jury teach or suggest adding lipid-based inclusions to a filling, nowhere does Jury teach or suggest forming the lipid-based inclusion after injecting a lipid-based melt into a filling. Rather, as stressed throughout Jury, the invention disclosed therein is a way to add characteristically-shaped chocolate bits to ice cream. (See, for example, Jury, column 1, lines 3-9; column 1, lines 36-49; column 2, lines 10-15; column 2, lines 31-36.) Jury expressly distinguishes these characteristically-shaped chocolate pieces from chocolate chips. (See, Jury, column 2, lines 31-36.) Clearly the disclosure of Jury is different from Applicants' claimed method. Applicants form the lipid-based inclusions by agitating the solidified lipid melt after it is in the filling--by breaking up the solidified melt. The object of Jury, on the other hand, is to minimize breaking or damaging the characteristic shapes. (See, Jury, column 2, lines 43-45.) Accordingly, Applicants submit that claim 27 and the claims dependent thereon are novel and non-obvious over Jury.


Finally, nowhere does Jury teach or suggest a method of delivering lipid-based inclusions to yogurt comprising the steps of providing filling for yogurt, wherein the filling is a high solids syrup mix having a water activity ( $A_w$ ) of less than 0.75; chilling the filling to a temperature below the temperature required to crystallize the lipid-based inclusions; providing a lipid-based melt that will form the inclusions when crystallized; injecting the lipid-based melt into the chilled filling; allowing the lipid-based melt to at least partially solidify in the chilled filling; and agitating the mixture to form the lipid-based inclusions in the filling. Nowhere does Jury teach or suggest delivering lipid-based inclusions to a filling wherein the filling is a high solids syrup mix having a water activity ( $A_w$ ) of less than 0.75. As discussed above, nowhere does Jury teach or suggest forming inclusion after the injection of the lipid-based material is added to a filling.

Applicants respectfully requests request reconsideration of claims 1-54 in view of the remarks made herein and that a timely Notice of Allowance be issued in this case.

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Respectfully submitted,

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